Supreme Court, U.S.
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No. 95-386 (3)

IN THE

Supreme Court Of The United States

OCTOBER TERM 1995

JASON RICHARDS and FANNIE HILL,

Petitioners,

v.

JEFFERSON COUNTY, ALABAMA
and BIRMINGHAM-JEFFERSON CIVIC
CENTER AUTHORITY,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ALABAMA

RULE 15.6 REPLY

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RULE 15.6 REPLY

By our reading of Rule 15.6, this reply is allowed to address "arguments first raised in the brief in opposition." In Jefferson County's brief in opposition it gets carried away and surprisingly contends: "What Petitioners have falsely described as an 'exemption scheme' is actually a division of taxing authority between the State and the County." (Jefferson County's Brief of Respondent in Opposition, pp. 22-23) Justice Maddox of the Alabama Supreme Court, in his dissent, efficiently answers this odd new argument (which we believe is based upon Jefferson County's concern that this Court will find this case to be virtually identical to its own exemption scheme decisions cited in the Petition) as follows:

> "In concluding that the trial judge was correct, I have examined the pleadings in *Bedingfield* and the order entered by the trial judge in that case and I have studied the opinion issued by this Court in *Bedingfield,* a case in which I participated. I have also carefully considered the argument of Jefferson County that 'the claims in this case arise from the same nucleus of operative fact as the claims made in *Bedingfield* and [that] because the evidence necessary to support both claims is identical, it is axiomatic that the fourth element of *res judicata* is satisfied, and I have given careful consideration to the views of my colleagues expressed in the majority opinion, and my only comment is that if the 'same cause of action presented in both suits' element of the res judicata doctrine is so easily satisfied, then it could be extended ad infinitum and would establish a precedent that could close the courthouse doors to other plaintiffs in other cases who might find themselves faced with the rule of law herein established. I think that the Court is establishing a bad precedent.

> My opinion that *Bedingfield* does not bar the claims presented in this case is the same as that of the trial judge: that this Court, in *Bedingfield*, did not adjudicate these claims, or any claims similar to them.
>
> . . .
>
> But even assuming that the federal equal protection claim was presented and adjudicated in *Bedingfield*, the plaintiffs in this case are attacking the exemption scheme contained in Ordinance No. 1120, which exempts a number of occupations from the occupational tax."
>
> —Appendix to Petition, pp. A-9 through A-11

Jefferson County also surprises the undersigned with a new argument that: "Petitioners are raising the issue of privity for the first time before this Court." (Jefferson County's Brief of Respondent in Opposition, p. 14" This is simply not so. In our complaint we cited *Bedingfield* twice (Appendix to Petition, pp. A-29, A-31) and distinguished it ("the occupational tax has been previously challenged in this court on non-federal and other state law grounds") from this action by showing that the *Bedingfield* case did not address or decide the fact that "[t]he array of persons subject to the occupational tax, when compared with the array of persons exempted from the tax, and the concomitant disparity in taxes paid by and between occupations in Jefferson County, Alabama which falls within and without the burden of the occupational tax, render it irrational, unduly burdensome, and violative of the equal protection clause and the due process clause of the Fourteenth Amendment to the Constitution of the United States." (Appendix to Petition, pp. A-27, A-28) Hence, our reliance upon *Martin v. Wilks*, 490 U.S. 755 (1989), for our contention that these petitioners, who were neither designated as parties nor made parties by service of process in *Bedingfield*, nor

members of a class (*Bedingfield* was not a class action) cannot fairly be bound by that judgment. Indeed, prongs three and four of the Alabama Supreme Court's res judicata analysis in this case addressed privity ("with substantial identify of the parties") and action identity ("with the same cause of action presented in both suits") adversely to petitioners for the first time in this litigation. Those erroneous analyses, and the constitutional deprivations which are their consequence, constitute the two-chambered heart of this appeal.

Respectfully submitted,

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